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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,652	11/26/2001	Daniel C. Shaw	6278.244a	4497

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Joseph W. Berenato, III
Myers, Liniak & Berenato
Ste. 240
6550 Rock Spring Drive
Bethesda, MD 20817

EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 09/03/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,652

Applicant(s)

SHAW ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27,30,31,33,36-45,48 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27,30,31,33,36-45,48 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 27, 30, 33 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaw '758.

The Shaw '758 (Shaw) reference discloses a control system comprising: a plurality of fixtures T,S,U; a source of water 20; a plurality of valves 24; a plurality of sensors D; and a microprocessor 34,44, as claimed. Re claim 48, recitation of "prison" in the preamble thereof is considered merely a label

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where the balance of the claim otherwise defines only a plumbing/water control system.

Applicant's argue at page 8 of the response filed July 24, 2003 Shaw is not prior art to the instant application. The examiner can not agree. The instant application is a continuation-in-part (via 07/822,201 filed January 17, 1992) of the Shaw patent. Indeed, the instant application has a different inventive entity than that of Shaw. See MPEP 706.02(a)II.

3. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw.

The choice of sensor type would appear an obvious choice to be made as taught by Shaw at column 4, lines 50-52. And, a capacitance sensor is one of the many well known sensor types. Applicant's have not separately argued this grounds of rejection.

4. Claims 48 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Robertshaw.

The Robertshaw reference discloses a control system comprising: a sensor DS (col. 1 lns. 38-40); a plumbing fixture S; and a time-delaying D1 controller CB, as claimed. The controller is both adjustable (col. 2 lns. 33-35 and 40-43), and "remote" from the fixture (Fig. 1). The recitation of "prison"

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in the preamble thereof is considered merely a label where the balance of the claim otherwise defines only a plumbing/water control system.

Applicant's argue at pages 8-9 of the response Robertshaw does not disclose a system which determines operation of a particular fixture from a plurality of fixtures, as set forth in the amended claims. The examiner can not agree. Claim 48 merely recites "a sensor operably associated with a particular plumbing fixture" (lns. 3-4) and "determining which sensor and associated particular fixture from a plurality of fixtures is requesting operation" (lns. 5-6). Robertshaw discloses a sensor DS controlling a particular fixture (any one in group) of a plurality of fixtures S. The broad language of claim 48 does not distinguish Robertshaw. Applicant's argue at page 9 of the response water systems for prisons must accommodate unique issues and problems compared to that of a communal system. The examiner does not necessarily disagree, however, claim 48 only positively recites a fixture and associated controller which is clearly disclosed by Robertshaw.

5. Claims 27, 30, 31, 33, 36, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Evelyn-Veere et al. and Atkins et al.

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Re claim 27, the Robertshaw controller is a "microprocessor" as it include a timing chip 10 (col. 3 lns. 32-40), and the term "microprocessor" connotes no distinguishing structure thereover. In any event, the Evelyn-Veere et al. (Evelyn-Veere) reference teaches at lines 56-61 in column 5 it is a matter of choice to implement a controller as either a microprocessor or hard-wired. Re claim 36, Robertshaw teaches adjusting the delay to desired requirements (col. 3 lns. 27-28) where the choice of particular delay would appear an obvious choice to be made. Applicant's argue at pages 9-10 of the response the time delay chip 10 of Robertshaw automatically overrides the sensor DS and is therefore not a microprocessor as claimed. The examiner can not agree. The time delay chip of Robertshaw delays sensor initiated operation of a particular fixture so that more than one flush during each delay period is prevented. Note lines 32-61 in column 2 of Robertshaw, for example. Applicant's argue at page 10 of the response Evelyn-Veere teaches away from the claimed system. The examiner can not agree. The Evelyn-Veere reference teaches an automatic water flow system controller may be implemented either by an off-the-shelf microprocessor, or by being hard-wired. Indeed, applicant's disclose implementing an automatic water flow system controller by an off-the-shelf microprocessor. Therefore,

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Robertshaw teaches all elements set forth in claims 27, 30, 36 except for the provision of associating a valve and sensor with individual fixtures.

Although the Robertshaw water control system does not include associating a valve and sensor with individual fixtures, as claimed, attention is directed to the Atkins et al. (Atkins) reference which discloses an analogous water control system which further includes associating a valve 14 and sensor 36 with individual fixtures 10 (col. 1 lns. 50-69). Therefore, in consideration of Atkins, it would have been obvious to one of ordinary skill in the art to associate a valve and sensor with individual fixtures of the Robertshaw water control system in order to prevent splashing or disturbing a user. Applicant's argue at pages 10-11 of the response Atkins is non-analogous art to the claimed system. The examiner can not agree. The Atkins system involves improvement to periodic interval flushing systems. Note lines 29-42 in column 1 of Atkins. The Robertshaw system involves improvement to periodic interval flushing systems. Note lines 7-23 in column 1 of Robertshaw. Since both the Atkins and Robertshaw disclosures are concerned with improvement to periodic interval flushing systems, one skilled in the art would consider implementing perfecting

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features of one such system into the another to gain the stated benefits thereof.

Re claim 31, although the Robertshaw sensor is not a capacitance sensor, as claimed, attention is again directed to Atkins which discloses use of a capacitance sensor. Therefore, in further consideration of Atkins, it would have been obvious to one of ordinary skill in the art to associate a capacitance sensor with the Robertshaw water control system in order to utilize a user's body capacity.

6. Claims 27, 30, 31, 33, 36-39, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Evelyn-Veere and Atkins as applied to claim 27 above, and further in view of Morris et al.

Although the Robertshaw water control system does not include a plurality of indicators, as claimed, attention is directed to the Morris et al. (Morris) reference which discloses an analogous water control system which further includes a plurality of indicators (col. 8 lns. 17-35). Therefore, in consideration of Morris, it would have been obvious to one of ordinary skill in the art to associate a plurality of indicators with the Robertshaw water control system in order to facilitate use in a prison. Applicant has not separately argued this grounds of rejection.

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7. Claims 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Evelyn-Veere, Atkins and Morris as applied to claim 37 above, and further in view of Book.

Although the Robertshaw water control system does not include a plurality of switches and a master switch, as claimed, attention is directed to the Book reference which discloses an analogous water control system which further includes a plurality of switches (col. 11 lns. 2-3) and a master switch 149. Therefore, in consideration of Book, it would have been obvious to one of ordinary skill in the art to associate a plurality of switches and a master switch with the Robertshaw water control system in order to facilitate user control. Applicant's have not separately argued this grounds of rejection.

8. Applicant's remarks have been fully considered and have been previously addressed.

9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS

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of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", is positioned above the printed name and title.

Robert M. Fetsuga
Primary Examiner
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